

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 14, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

HAWAII

After-the-Fact Consent to Assign Lease of Non-Exclusive Easement S-5212, William E. Gibson and Kahala-Ann Trask-Gibson, Assignor, to Teaderman Business Park LLC, Assignee and Amend Lease of Non-Exclusive Easement S-5212, Holualoa 3<sup>rd</sup>, Kaunalumalu, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-7-04: seaward of 9.

APPLICANT:

William E. Gibson and Kahala-Ann Trask-Gibson, Assignor, to Teaderman Business Park LLC, a California limited liability corporation, whose business and mailing address is 221 Devlin Road, Napa, CA 94558, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Holualoa 3<sup>rd</sup>, Kaunalumalu, North Kona, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/ 7-7-04: seaward of 9, as shown on the attached map labeled Exhibit A.

AREA:

.0033 acres or 142 square feet, more or less.

EASEMENT	AREA
Easement 2	36 square feet
Easement 3	106 square feet

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_ NO  
  X  

CHARACTER OF USE:

Right, privilege, and authority to after-the-fact construction, use, maintenance, and repair  
of the seawall and other landscape improvements.

TERM OF LEASE:

55-years, commencing on January 12, 1990 and expiring on January 11, 2045.

ANNUAL RENTAL:

\$852 one-time payment paid on April 10, 1991.

CONSIDERATION:

\$10.00

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Not applicable. Assignors, as individuals, are not required to register with DCCA.

ASSIGNEE:

Place of business registration confirmed:	YES <u>  x  </u>	NO
Registered business name confirmed:	YES <u>  x  </u>	NO
Good standing confirmed:	YES <u>  x  </u>	NO

REMARKS:

At its meeting of January 12, 1990, Item F-10, the Board of Land and Natural Resources approved and amended its approval to grant Yotsuyaken Corporation and William Gibson and Kahala-Ann Trask Gibson a 55-year term, non-exclusive easement for seawall and landscape improvements. The Board further assessed a \$500 fine to each party for the unauthorized use and encroachment. The seawall encroachment was built by the prior landowner fronting Parcel 3 owned by Yotsuyaken Corporation and Parcel 9 owned by Mr. and Mrs. Gibson. Staff notes that Yotsuyaken Corporation has Lease of Non-Exclusive Easement S-5211.

In 2007, Mr. and Mrs. Gibson sold their private property (tmk: 7-7-4:9) to Teaderman Business Park, LLC. As a result, it is now necessary to assign Lease of Non-Exclusive Easement S-5212 to Teaderman Business Park, LLC, as the current landowner.

Staff reviewed the file and reports that in the past two (2) years, a notice of default was sent on 10/5/07 for failure to provide proof of liability insurance. A current certificate of liability insurance was later provided. The Lessee has never been cited for any other illegal or unlawful activity on the State property.

Teaderman Business Park LLC, as Assignee, has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no outstanding rental reopening issues.

The easement document was issued in 1992, a time when the State's easements did not 'run with the land'. Easements now issued by the State have such a provision. The grantee needs to only inform his successor of the State's liability insurance requirement when the easement is sold. The provision saves the Board, staff, Attorney General's Office, and Grantee, escrow companies, etc. a lot of time and effort. As easement holders come forward with a request, staff will be reviewing the easement document and if applicable, recommending amendments. Staff is recommending this amendment to Lease of Non-Exclusive Easement S-5212.

RECOMMENDATION: That the Board

- A. Consent to the assignment of Lease of Non-Exclusive Easement S-5212 from William E. Gibson and Kahala-Ann Trask-Gibson, Assignor, to Teaderman Business Park LLC, as Assignee, subject to the following:
  1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
  2. Review and approval by the Department of the Attorney General; and
  3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Amend Lease of Non-Exclusive Easement S-5212 to include the following condition:
  1. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (3) 7-7-4:9, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or

otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.

2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



for

Wesley T. Matsunaga  
Land Agent

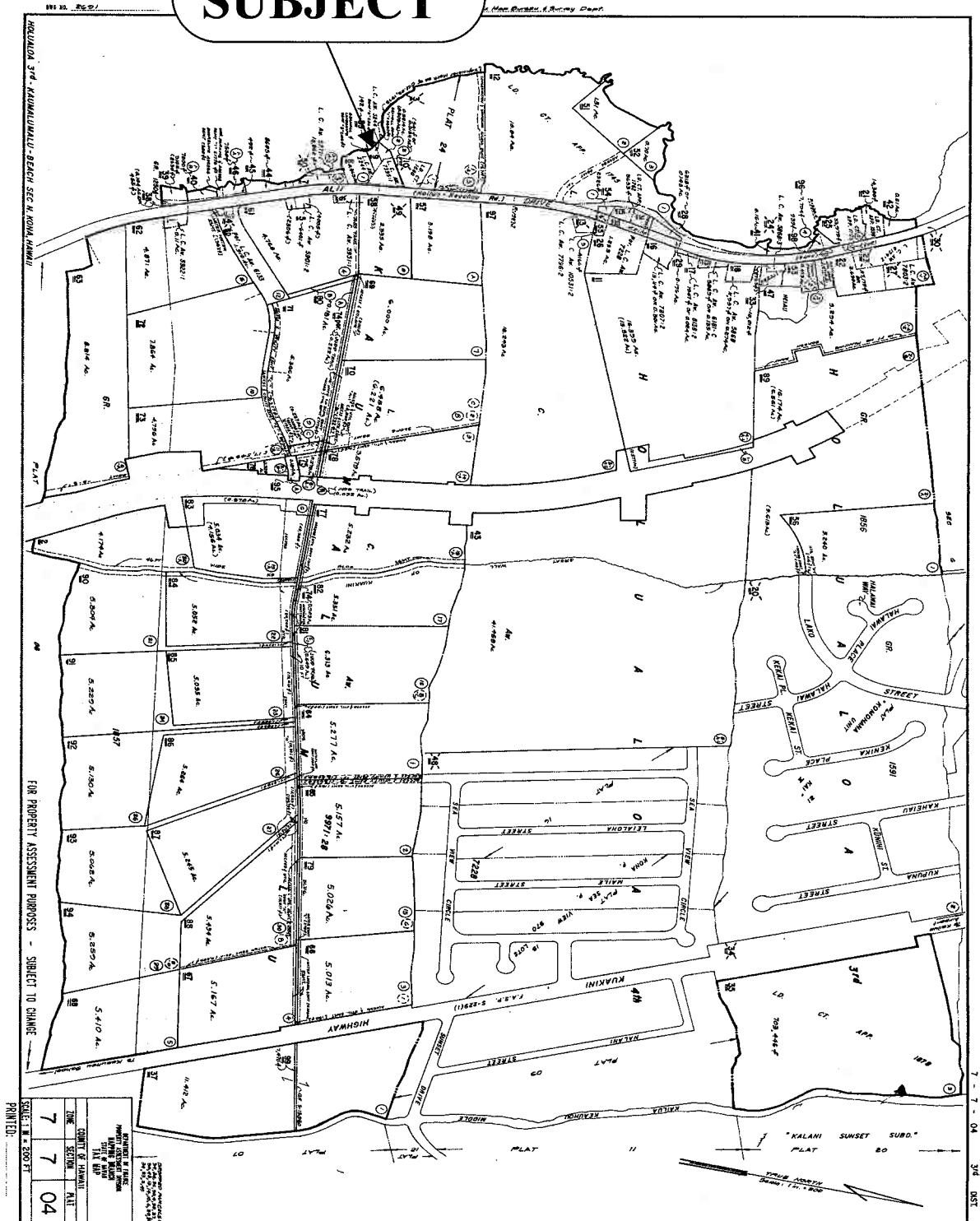
APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



# SUBJECT



# EXHIBIT A

